D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 570/2003.

DATE OF ORDER : 27.07.2005.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. R.S. CHAUHAN, J.

Mr. M. Mridul, }
Mr. R.N. Upadhayay } for the appellant.

Mr. Yashwant Mehta for the respondents.

This appeal is directed against the judgment of the learned Single Judge dated 4.12.2002, which reads as under:

> "In similar S.B.C.W.Pet. No.3943/92 (Jeewa Ram Vs. M.B.Pali) was dismissed by this Court on 19.2.99. This petition is also dismissed as having become infructuous."

It is contended by the learned counsel for the appellant drawing attention to the order dated 19.9.99 passed in S.B. Civil Writ Petition No.3943/1992 that the writ petition has wrongly been dismissed with reference to the decision in Writ Petition No.3943/1992, which reads as under:

> "It is stated by the counsel that during the pendency of this petition, the petitioners who are 12 in number have either been regularised or absorbed and probably there is no cause of action left. In view of these circumstances, the petition is dismissed as infructuous. If any course of action survives to any person during the pendency of this petition, he will be at liberty to approach the Court for redressal."

The writ petition filed by Jeeva Ram and others had been rendered infructuous as the petitioners in that case had

stated before the Court that their services had been regularised and since the petitioners have already got relief, the petition had become infructuous. No such statement had been made either on behalf of the Municipal Commissioner or the petitioner before the learned Single Judge to infer that the petition had become infructuous. Therefore, the judgment under appeal, in our opinion, is patently erroneous.

However, from the pleadings of the parties, it is apparent that it relates to claim of the petitioner – appellant challenging the validity of the termination of his services on the ground that it is violative of Article 25-F and others provisions of the Industrial Disputes Act, 1947. The appellant has in his petition claimed that he was working since 1979 onwards until 1.8.1992, when his services were terminated by an oral order without adherence to any provision of the Industrial Disputes Act.

The respondents have denied this fact, firstly alleging that as per the date of birth disclosed by the petitioner in the year 1979, the petitioner -appellant was not even eligible to be appointed and that fact is presently erroneous. The respondents have also stated that the petitioner had been casual employee intermittently for short duration as and when the occasion had

arisen. Details of the period during which he has been given employment from 1980 onwards until March 1998 were also furnished, which shows that during the total period of 8 years during which the petitioner had worked with them, he has only worked for 758 days pointing out that during none of the year, he has worked for 240 days or more. It has further been stated that in some of the year he has worked merely for one month, two months or three months.

In rejoiner filed by the appellant – petitioner, it has not been asserted that from 1988 until the date of alleged termination for how many period, the petitioner has actually worked. The only claim to one year's continuous service made in the rejoinder is that he has completed 240 days during the Financial year 1985-86. If the petitioner is relying on Section 25-B of the Industrial Disputes Act in order to count the actual working days to be computed has to be within 12 months immediately preceding date of the alleged termination, about which no material much less admitted material, has been placed.

In these circumstances, it is not possible to adjudicate the appellant's claim in extraordinary jurisdiction. The petitioner ought to have raised Industrial Dispute and if so

advised, the appropriate government may have taken the decision thereon.

The appeal, therefore, is dismissed on other grounds then what prevailed before the learned Single Judge.

No costs.

(R.S. CHAUHAN)J. **(RAJESH BALIA)J.**

Anil/